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Before The

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

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PP Docket No. 93-253

To: The Commission

COMMENTS OF

THE SMALL BUSINESS PCS ASSOCIATION

The Small Business PCS Association ("SBPCS") hereby responds to the Commission's Notice of Proposed Rule Making (FCC 93-455, released October 12, 1993) in the above-captioned proceeding. The SBPCS was formed to be a voice for the small businesses that plan to be active participants in the PCS industry. The association membership is composed primarily of small business holders of PCS experimental licenses. The organizer of SBPCS is **kycom, Inc.**¹

While **SBPCS** has opinions on many of the topics covered in the NPRM, we feel that it will be most productive to focus on major issues which will have a substantial and critical impact

¹ **kycom** is a small entrepreneurial company that has been established to provide PCS service in the state of California and nationwide. The company has been granted an experimental license to conduct market trials involving customers in San Jose, Sacramento, and Los Angeles, California. Work is progressing to implement these trials with operation scheduled to begin in January 1994.

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on the ability of smaller companies to participate meaningfully in the development of PCS, in particular, and other new services as well. By focusing our comments in this way, we feel we will provide input to the Commission which, if adopted, will substantially improve the quality of service available and shorten the lead time before PCS service is available to the public.

1. Set Asides for Small Business, Minority and Woman-Owned Businesses, and Rural Telco's (SWMRs). The proposal in the NPRM for a SWMR set aside of two of the PCS frequency bands offers a major opportunity for the small businesses of the country. The FCC should resist efforts by large special interests to pare down or to eliminate these set asides. A small business operating a single BTA service region can very effectively compete with large businesses operating larger service areas.

The Omnibus Budget Reconciliation Act of 1993 directs the FCC to promote economic opportunity and competition by "disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." Without set-asides to ensure participation by these entities they will be left out since it will not be possible for them to compete in an auction against some of the largest companies and wealthiest individuals in the United States.

It has been said that an advantage of allowing large companies and the highest possible bids to dominate the auction process is that this will produce uniform equipment and seamless roaming throughout large areas of the country. However this will be the case even if there are many small

business license holders since there will be a national Common Air Interface standard for PCS, as there is for cellular. This will allow subscribers with both small and large companies to operate wireless telephones anywhere in the United States. In addition nationwide roaming with seamless interconnection will be offered by small PCS companies taking advantage of national networking services. More than five of these networking services currently exist and are offering their capability to small businesses who are potential PCS operators.

The economies of scale touted for large service areas and large companies have been greatly overstated. The basic building block of a PCS system is the region served by a single switch. In larger areas, up to 100,000 subscribers can be handled by a single switch. Economies of scale for areas larger than this are limited primarily to discounts associated with volume buying. This will be mitigated for small businesses by the formation of large buying cooperatives consisting of small businesses from around the country. (In the case of PCS, there will be a number of buying cooperatives, including one formed by the Small Business PCS Association.)

The argument that a 10 MHz frequency band is not adequate to establish an economically viable PCS system is simply not true. While a 20 MHz band is probably ideal, it is possible to establish a PCS system with 10 MHz that provides significantly more capacity than cellular (which has 25 MHz of spectrum). The reason for the higher capacity of a PCS system is substantially increased frequency reuse which is achieved by using the smaller, lower-priced PCS cells.

2. Financing for SWMRs.

a. **Upfront Payment.** The upfront payment of 2¢ per MHz per POP proposed in the NPRM is a good idea since it will limit the participation of speculators without the resources to establish a PCS service to the public. However, the upfront payment should be refunded to a SWMR if he is later disqualified for any reason other than a flagrant violation of the rules, such as collusive behavior in the auction. This will remove a major roadblock in obtaining upfront payment financing for the SWMRs.

b. **20% Payment.** A payment equal to the difference between the upfront payment and 20% of the license price, paid at the time of auction, is very onerous for small businesses. A payment of this size would run counter to the objective of the Omnibus Budget Reconciliation Act of 1993 in considering alternative payment schedules to promote the dissemination of licenses among a wide variety of applicants.

When arranging financing it is the first 20% that is hardest to obtain and the financing is of greatly reduced value if 20% must be paid in advance. It is recommended that for SWMRs the amount of this payment be reduced to 10% of the license price (if this amount is greater than the upfront payment). Also, this payment should be refundable to a SWMR if he is disqualified so that investors from the financial community can be offered a reasonable protection for their investment.

c. **SWMR Financing for Non-Set Aside Licenses.** The same financing terms made available to SWMRs for the set aside licenses should also be available for any license acquired by a qualified SWMR.

d. **Payment Terms.** The payment term should be the full initial license term of the authorization. For PCS licenses this term is ten years. The first payment should not be due for two years and quarterly payments should be 0.5% of the license price until year five when the balance due will be amortized by equal payments through year ten.

3. **Sequence of Bidding and Issuance of Licenses.** In the sequence of auctioning and issuing licenses there should be no unfair advantage given to any class of license holder. For example, if all MTAs were auctioned before any BTAs, the MTA license holders would be given a substantial time advantage in introducing their PCS service to the public before the smaller company BTA license holders. Licenses should be auctioned in a sequence beginning with the largest Major Trading Area (MTA). After the largest MTA, its component Basic Trading Areas (BTAs) should be auctioned. Then the next largest MTA and its component BTAs should be auctioned, and so on. Licenses should be issued at the same time for each MTA and its component BTAs.

4. **Combined Bids.** While combined bidding may have some advantage for MTAs, it is certainly not appropriate for BTAs. For one reason this would transform BTA bidding into an auction for only big companies or very well heeled investors. For another, the possible permutations and combinations for all 491 BTAs would be staggering and would certainly delay the auction

process. Combined bidding on either a frequency basis or geographic basis should not be allowed for BTAs.

5. Definition of SWMR. In order to qualify for a SWMR set aside it should be necessary to be a small business first. The intention of Congress was not to provide special treatment to large businesses that happened to be owned by women or minorities. (A separate standard involving number of access lines might be most appropriate for rural telco's.) As for the definition of a small business, we think that the most appropriate definition is in 13 CFR § 121, i.e., less than \$6 million in net worth and less than \$2 million in profit after tax for the past two years. However, the simultaneous size standard which must also be met is too high in that paragraph (at 1500 employees) and should be reduced to 200 employees.

For consortia bidding, 90% of the ownership should be SWMRs to qualify for a set aside. Furthermore, there should be no non-SWMR purchase options allowed to be in existence at the time of the auction that would bring the non-SWMR interest to greater than 90% within five years. For individual members of a consortia, each individual must meet the \$6 million net worth requirement for the consortia to be eligible for a SWMR set aside.

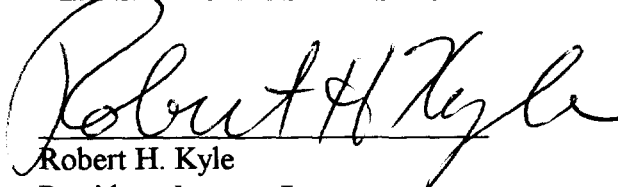
6. Security Interest in License. An important part of SWMR financing for infrastructure to build out a system will come from its vendors and equipment suppliers. In order to make this financing more available it is necessary to allow financing organizations to have a security interest in a

license purchased at auction. This would provide the needed financing for SWMRs to acquire the required large infrastructure for implementing services like broadband PCS.

SBPCS firmly believes that small entrepreneurs have a substantial role to play in the deployment of new services in the United States. Like every other communications advance, the small entrepreneur has the incentives to deploy services quickly and ubiquitously in their sphere of influence and expertise. The rules for auctions should be drawn to assure small business participation in these burgeoning new industries. Moreover, the rules should be designed to assure that serious entrepreneurs are given a reasonable chance to participate without being burdened by financing requirements that can only be met by large companies. The suggestions described here will achieve these objectives.

Respectfully submitted,

THE SMALL BUSINESS PCS ASSOCIATION

A handwritten signature in black ink, reading "Robert H. Kyle". The signature is written in a cursive, flowing style with a large initial "R".

Robert H. Kyle
President, **kycom, Inc.**
Its Chairman

Small Business PCS Association
96 Hillbrook Drive
Portola Valley, CA 94028
415-851-1615

November 9, 1992